IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Mool Chand Vs. State of Rajasthan

S.B.CR.MISC. PETITION NO.630/2004

DATE OF ORDER :: November 16, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.M.A.Siddiqui, for the petitioner.
Mr. Ashok Upadhyaya, P.P.
Mr.Sudhir Saraswat, for the complainant.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 29.6.2004 passed by the Additional Sessions Judge No.1, Jodhpur (for short 'the revisinal court' hereinafter), whereby the revision petition filed by the petitioner against the order dt. 29.1.2003 passed by the Judicial Magistrate No.4, Jodhpur (for short 'the trial court' hereinafter), was partly allowed and the order framing charge for the offence under section 457 I.P.C. was set aside against the petitioner and the petitioner was discharged for that offence, however, the order framing charge under section 380 I.P.C. was maintained.

I have heard learned counsel for the parties. Carefully gone through the orders passed by both the courts below as also the record of the trial court.

The complainant admittedly is a partner of the present petitioner. The shop, where the partnership business was carried on, was initially owned and possessed by the present petitioner Mool Chand, however, subsequently, it appears that the complainant entered into the partnership in firm and it has not been disputed even by the complainant that the petitioner and the complainant were the partners of the firm and carrying on business jointly. The allegation against the petitioner is that the books of the account of partnership firm, to which the petitioner himself is one of the partners, were taken to his house by the petitioner and, therefore, committed the offence of theft and lurking house trespass.

The revisional court did not find the ingredients for the lurking house trespass or house breaking on the ground that the shop in question is owned and possessed by the petitioner and from the investigation papers, so far as taking books of accounts to his house without consent of another partner, the revisional court came to the conclusion that this should amount to offence

of theft. In my view, the trial court and the revisional court both fell in error. The essential ingredients for the offence of theft are not made out from the material available on record, more particularly, in view of the admitted fact that it was the petitioner himself in possession of the books of accounts as well as the shop. The essential ingredients for the offence of theft as envisaged under section 378 I.P.C. are that whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

In the instant case, the petitioner being a partner of the firm was in possession of the books of accounts of firm and, therefore, it cannot be said that the complainant was in exclusive possession of the books of accounts, which the petitioner dishonestly and without consent of the complainant took away. In the circumstances, therefore, on close scrutiny of the material on record including the record of the trial court in my view, the very essential ingredients of theft are also not made out against the petitioner.

In this view of the matter, the petition is allowed. Order of the revisional court to the extent maintaining the charge against the petitioner for the offence under section 380 I.P.C. is set

aside. The petitioner is discharged for the offence under section 380 I.P.C. Record of the trial court be sent forthwith. The stay petition also stands disposed of.

[H.R.PANWAR],J.

m.asif/-